

11-7337

MEMORANDUM FOR: Acting Director of Central Intelligence

SUBJECT: Exclusion from Government Property of Contractor's Employees

1. This memorandum is for information only.
2. On 21 August 1959 the United States Court of Appeals for the District of Columbia Circuit decided the first security case<sup>1</sup> under the Supreme Court's decision in Greene v. McElroy. According to the decision an employee of a contractor with the United States cannot be excluded from Government premises on security grounds in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination, when such exclusion results in the loss of employment.
3. The case involved a civilian cook employed by a private corporation which operated a cafeteria in the Naval Gun Factory under contract made with Government officers. She and her employers were not told what the security requirements were or why she was believed not to meet them. The opinion written by Judge Edgerton expands the doctrine of the Greene case which did not affect the security procedures of this Agency where contractors were involved. Now, however, Government officials apparently will have little, if any, discretion to control, on security grounds, the entry onto Government property of persons employed by Government contractors. Furthermore, in a concurring opinion, Judge Fahy suggests that the rationale of the decision was based on the constitutional requirement of due process - the manner of deprivation "was unauthorized and in this case was otherwise unreasonable as well."
4. The Court pointed out that no action could lie against the employer because the contractor had no choice but to terminate the employment of the cook when her right of entry to the site of her employment was terminated. The Court also held that the employee's union had standing to sue to protect the interests of one of its members.

<sup>1</sup>Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO, et al. v. Neil H. McElroy, Individually and as Secretary of Defense, et al.

OGC Has Reviewed

5. This Agency will continue to use practical measures to prevent access to Agency-controlled property by contractor's employees determined to be security risks. However, under this recent decision there is a possibility that if such an employee loses his job by reason of being denied access to the Langley construction site, for example, he and his union could bring a suit for the loss of his job against the Director. We shall discuss the implications of this decision with the Office of Security and the Department of Justice in order to determine precisely what steps must be taken now to insure the maintenance of effective security procedures wherever this Agency has dealings with contractors and their employees.

Attachment

s/ John S. Warner

JOHN S. WARNER  
Acting General Counsel

cc: DCI  
ER  
Office of Security  
Office of Logistics